

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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KENNETH DANIELS

Plaintiff,

v.

MORRIS COUNTY CORRECTIONAL  
FACILITY, SHERIFF EDWARD V.  
ROCHFORD, CHIEF RALPH McGRANE,  
WARDEN FRANK CORRENTE, JOHN  
DOES AND JANE ROES 1-10, XYZ,

Defendants.

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Hon. Dennis M. Cavanaugh

**OPINION**

Civil Action No. 06-2460 (DMC)

DENNIS M. CAVANAUGH, U.S. District Judge

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, Defendants' motion is **granted**.

**BACKGROUND**

On April 29, 2006, Kenneth Daniels ("Plaintiff") a state pretrial detainee confined at the Morris County Correctional Facility ("MCCF"), filed an intake request form indicating that he needed to place a phone call to his public defender. His request was denied and on April 30, 2006, Plaintiff filed another request seeking further explanation for the denial. On April 31, 2006, the Social Services Supervisor ("Supervisor") explained that Plaintiff's request was denied

because telephone access is provided to prisoners in their housing units. Therefore, Plaintiff was not denied access to the ability to place collect calls. Plaintiff explained that his public defender did not accept his collect calls. The Supervisor then directed Plaintiff to MCCF's system for written communication with his public defender.

In support of their Motion, Defendants submit the Certification of Warden Frank Corrente ("Corrente"), which explains that MCCF provides a three-tiered system for administrative review of prisoner grievances. Attached to the Corrente Certification is the MCCF inmate manual which specifies that when a prisoner alleges a "violation of civil, constitutional, statutory rights or the violation of facility policy," a grievance form may be filed. After it is filed, the form is reviewed by a Grievance Coordinator who will refer the matter to the appropriate staff member for a written answer directed to the complaining inmate. Thereafter, a prisoner may appeal an adverse decision to a five-member Grievance Committee. Any determination of the Grievance Committee can be appealed to the Facility Administrator.

Plaintiff never filed a grievance with a facility staff member at MCCF. Therefore, Plaintiff's complaint was never reviewed internally by the MCCF before he filed this suit on June 10, 2006. Defendants moved for dismissal on October 13, 2006. Plaintiff never filed any opposition to Defendants' motion.

## **DISCUSSION**

### **Motion to Dismiss Standard**

A claim may be dismissed by motion where a complaint "does not state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When deciding a motion to dismiss, all allegations in the Complaint must be taken as true and viewed in the light most favorable to the

nonmoving party. *See Warth v. Seldin*, 422 U.S. 490, 501 (1975). In evaluating a Rule 12(b)(6) motion to dismiss, a court may consider only the Complaint, exhibits attached to the Complaint, matters of public record, and undisputedly authentic documents if the plaintiff's claims are based upon those documents. *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993). If, after viewing the allegations in the complaint in the light most favorable to the plaintiff, it appears beyond doubt that no relief could be granted "under any set of facts which could prove consistent with allegations," a court shall dismiss a complaint for failure to state a claim. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

Although some courts have held Fed. R. Civ. P. 12(b)(6) does not, by its terms, allow for extraneous materials, in the interest of prompt justice, when a party attaches material outside the pleadings to its motion to dismiss, a court "has the discretion to accept the extraneous material and convert the motion into one for summary judgment." *In re Rockefeller Ctr. Props., Inc. Sec. Litig.*, 184 F.3d 280, 287 (3d Cir. 1999); *Gunson v. James*, 364 F. Supp. 2d 455, 460-61 (D.N.J. 2005). This Court, therefore, accepts the Corrente Certification and attached MCCF inmate manual.

### Analysis

\_\_\_\_\_ The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997(e), states that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997(e)(a). The exhaustion of all administrative remedies is mandatory, even if the prisoner believes that the administrative remedies will be ineffective. *Booth v. Churner*, 532 U.S. 731, 739-41 (2001); *Porter v. Nussle*,

534 U.S. 516, 524 (2002). In order to comply with the requirements of the PLRA, administrative remedies must be exhausted prior to a suit in federal court. Spruill v. Gillis, 372 F.3d 218, 226-27 (3d Cir. 2004).

In determining whether a prisoner has properly exhausted administrative remedies, a court must consider the prisoner's compliance with the prison's administrative regulations governing inmate grievances. Id., at 222. "[C]ompliance with the administrative remedy scheme will be satisfactory if it is substantial." Nyhuis v. Reno, 204 F.3d 65, 77-78 (3d Cir. 2000).

The exhaustion requirement demands that a prisoner be responsible for bringing a grievance to the attention of the appropriate prison official so that the facility has an opportunity to respond to the grievance before resorting to the court system. Spruill, 372 F.3d at 227. This procedure provides corrections officials with the chance to address complaints internally before an issue is brought before a federal court. Porter, 534 U.S. at 524-25.

Here, Plaintiff did not avail himself to MCCF's grievance system at all. There is no record of Plaintiff having filed a grievance with any member of the MCCF staff and Plaintiff offers no evidence of his having pursued his complaint through the channels available to him at the MCCF. Plaintiff admits in his complaint that he only sought administrative remedies verbally. An oral attempt is insufficient to invoke the grievance procedures at MCCF, let alone exhaust all administrative remedies.

**CONCLUSION**

Based on the foregoing, Defendants' motion for dismissal of Plaintiff's complaint is **granted**. An appropriate Order accompanies this Opinion.

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S/ Dennis M. Cavanaugh  
Dennis M. Cavanaugh, U.S.D.J.

Dated: January 22, 2007.